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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**In re:**

**PG&E CORPORATION**

**-and-**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

- ☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric Company  
☒ Affects both Debtors

*\* All papers shall be filed in the lead case, No.  
19-30088 (DM)*

CASE NO. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**CENTERVIEW PARTNERS LLC'S  
EX PARTE MOTION FOR ENTRY OF AN  
ORDER AUTHORIZING CERTAIN  
CONFIDENTIAL INFORMATION TO BE  
FILED UNDER SEAL IN CONNECTION  
WITH THE APPLICATION OF THE  
OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS FOR AUTHORITY TO  
RETAIN AND EMPLOY CENTERVIEW AS  
INVESTMENT BANKER**

Centerview Partners, LLC ("Centerview"), proposed investment banker to the Official Committee of Unsecured Creditors (the "Committee"), hereby moves (the "Motion"), pursuant to Sections 105(a) and 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 1001-2(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District of California (the "Bankruptcy Local Rules"), and the *New District Wide Procedures for Electronically Filing*

1 *Sealed and Redacted Documents adopted by the United States Bankruptcy Court for the Northern*  
2 *District of California* (the “Local Procedures”), for entry of an order (i) authorizing Centerview to  
3 file the unredacted versions of Schedule 1 of the Chopra Declaration under seal and confidential, and  
4 (ii) directing that the Confidential Information contained in Schedule 1 of the concurrently filed  
5 Chopra Declaration and any subsequent pleadings remain under seal and confidential and not be  
6 made available to anyone other than the Court, the U.S. Trustee, attorneys for PG&E Corporation and  
7 Pacific Gas and Electric Company (collectively, the “Debtors”), and attorneys for the Committee and  
8 the Official Committee of Tort Claimants, without the prior written consent of the Debtors (with  
9 respect to the Confidential Information) and Centerview.

10 A proposed form of order is concurrently filed, in accordance with Bankruptcy Local Rule  
11 1001-2(a) and Civil Local Rule for United States District Court for the Northern District of California  
12 79-5(d)(1)(B) (the “Proposed Order”). A version of Schedule 1 of the Chopra declaration with the  
13 Confidential Information redacted has also been publicly filed in accordance with Local Rule 79-  
14 5(d)(1)(D).

15 The Motion is based on this Memorandum of Points and Authorities, the concurrently filed  
16 Chopra Declaration, the complete files and records of the referenced matters, the arguments of  
17 counsel, and such other and further matters as this Court may consider at or before any hearing on  
18 this Motion.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. JURISDICTION**

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Centerview requests relief based on §§ 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.

### **II. FACTS**

On January 29, 2019 (the “Petition Date”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

The Committee filed applications (collectively, the “Applications”) on April 3, 2019, to retain (i) Milbank LLP (“Milbank”) as counsel [Dkt. No. 1208], (ii) FTI Consulting (“FTI”) as financial advisors [Dkt. No. 1212], (iii) Centerview as investment banker [Dkt. No. 1213], and (iv) Epiq Corporate Restructuring, LLC (“Epiq”) as information agent [Dkt. No. 1214].

To protect commercially sensitive and confidential information, as described below, and to simultaneously ensure appropriate disclosure in these chapter 11 cases, Centerview’s application described connections with confidential advisory clients, as applicable, without setting forth the clients’ names (the “Confidential Information”). As disclosed in the application and accompanying disclosure declarations, none of these connections are related to the Debtors or these chapter 11 cases.<sup>1</sup> Centerview therefore does not believe that these connections preclude Centerview from meeting the disinterestedness standard under the Bankruptcy Code. Moreover, the manner in which

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<sup>1</sup> “Centerview currently is engaged to advise and/or was formerly engaged in the last three years to advise several Potential Parties-in-Interest and/or their affiliates that, due to confidentiality obligations owed to such entities, Centerview is unable to disclose. These Potential Parties-in-Interest are in the following categories: ‘Bank Accounts,’ ‘Contract Counterparties,’ ‘Litigation Counterparties/Litigation Pending Lawsuits,’ ‘Top Unsecured Creditors,’ ‘Unsecured Notes,’ ‘Utility Providers,’ and ‘Vendors.’ Centerview’s work for each of these entities is or was on matters that are wholly unrelated to the Debtors or these cases.” Centerview Application Ex. B, Schedule 2 at 4.

1 Centerview disclosed the Confidential Information is consistent with the way other chapter 11  
2 professionals have disclosed such information for many years.

3 The hearing (the “Hearing”) to consider, among other things, the Applications is scheduled  
4 for April 24, 2019, at 9:30 a.m. (PT), and the deadline to object to the Applications was April 17,  
5 2019, at 4:00 p.m. (PT) (the “Objection Deadline”). No party other than the Office of the United  
6 States Trustee has provided comments or otherwise objected to the Applications.

### 7 **III. BASIS FOR RELIEF REQUESTED**

8 Under Section 105(a) of the Bankruptcy Code, the Court “may issue any order, process, or  
9 judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).  
10 Section 107(b) further provides:

11 On request of a party in interest, the bankruptcy court *shall*, and on the  
12 bankruptcy court’s own motion, the bankruptcy court may —

13 (1) protect an entity with respect to a trade secret or confidential research,  
14 development, or commercial information . . . .

15 11 U.S.C. § 107(b) (emphasis added).

16 Section 107(b) therefore makes it “mandatory for a court to protect documents” falling  
17 into one of three exceptions: confidential business information, scandalous or defamatory  
18 matter, and means of identification. *In re Roman Catholic Archbishop of Portland in Oregon*,  
19 661 F.3d 417, 431 (9th Cir. 2011); *see also Video Software Dealers Ass’n v. Orion Pictures*  
20 *Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (explaining that “if the information fits any of the  
21 specified categories, the court is *required* to protect a requesting interested party and has no  
22 discretion to deny the application”). Indeed, the “authority goes not just to the protection of  
23 confidential documents, but to other confidentiality restrictions that are warranted in the  
24 interests of justice.” *In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003).

25 The Bankruptcy Rules similarly set forth the procedures by which a party may obtain  
26 a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018  
27 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice,  
28 the court may make any order which justice requires (1) to protect the estate or any entity in

1 respect of a trade secret or other confidential research, development, or commercial  
2 information.” Fed. R. Bankr. P. 9018. This Court’s Local Procedures require that a request to  
3 file under seal be narrowly tailored to sealable materials. *New District Wide Procedures for*  
4 *Electronically Filing Sealed and Redacted Documents.*

5 **A. The Confidential Information Should Be Filed Under Seal**

6 To begin with, Section 107(b) protections are not just afforded to a debtor. *See In re*  
7 *Borders Group, Inc.*, 462 B.R. 42, 48 (Bankr. S.D.N.Y. 2013) (“Rather, a bankruptcy court  
8 may ‘protect an entity with respect to . . . commercial information.’”). And if an entity seeks  
9 protection under Section 107(b), as Centerview does here, it need only show that the  
10 information it seeks to seal is “confidential” and “commercial” in nature. *Orion Pictures*  
11 *Corp.*, 21 F.3d at 27. It is well settled that commercial information is information which  
12 would cause “an unfair advantage to competitors by providing them information as to the  
13 commercial operations of the debtor.” *In re Itel Corp.*, 17 B.R. 942, 944 (9th Cir. B.A.P.  
14 1982). But commercial information need not rise to the level of a trade secret to fall under  
15 Section 107(b)’s protection. *Orion Pictures Corp.*, 21 F.3d at 28. In fact, commercial  
16 information can include situations where disclosure would “have a ‘chilling effect on  
17 [business] negotiations, ultimately affecting the viability of Debtors,’” *In re Borders Group,*  
18 *Inc.*, 462 B.R. at 47 (citations and quotations omitted), and those in which information could  
19 affect the “‘buying and selling of securities on the open market,’” *In re Barney’s Inc.*, 201  
20 B.R. 703, 708 (Bankr. S.D.N.Y. 1996) (citations and quotations omitted).

21 Centerview is seeking to preserve the confidentiality of just four confidential client  
22 engagements in these chapter 11 cases.<sup>2</sup> Client confidentiality is fundamental to, and at the  
23 center of, Centerview’s business. Indeed, Centerview’s client engagements are, by their  
24 terms, confidential. Centerview’s clients have an expectation that Centerview will exercise  
25 discretion with respect to their engagements. If Centerview were to publicly disclose the

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28 <sup>2</sup> We refer to four confidential client engagements rather than the 16 redacted rows on Schedule 1  
because we have collapsed potential parties in interest and/or their affiliates thereof. Chopra  
Decl. ¶ 8.

1 names of its client engagements, this would suggest a lack of discretion in a highly  
2 competitive business that values discretion. This could hinder Centerview's ability to attract  
3 new clients, who would be disincentivized from hiring Centerview for their sensitive matters.  
4 In addition, it would prejudice Centerview's current clients, whose confidential information  
5 would be disclosed.

6       Significantly, Centerview, a corporate advisory firm that only provides corporate  
7 advice including advice on mergers and acquisitions and restructurings, is often involved in  
8 high-profile, non-public mergers and acquisitions and related transactions where the  
9 disclosure of Centerview's involvement before the deal becomes public could lead to investor  
10 speculation, move the market, violate securities laws, or disrupt a deal. Such disclosure  
11 would prejudice both Centerview and its confidential clients who have no stake in these  
12 chapter 11 cases and have relied on Centerview to keep their relationships confidential.  
13 Indeed, the mere fact that Centerview is representing such parties can constitute commercially  
14 sensitive information from such third parties' perspectives, since a current or prior  
15 engagement with Centerview may signal that the company is exploring a significant  
16 transaction, such as a sale. Moreover, Centerview's representation of its confidential clients  
17 is commercially/competitively sensitive information for Centerview because Centerview is  
18 engaged in a highly competitive industry and the disclosure of the Confidential Information  
19 would give Centerview's competitors an unfair advantage. *See, e.g., In re Borders Grp., Inc.*,  
20 462 B.R. at 48 (sealing identity of key employees and vendors that would give an unfair  
21 advantage to movant's competitors). Further, requiring Centerview to disclose in a public  
22 forum the Confidential Information would have wide-ranging effects on other chapter 11  
23 professionals who have confidentiality obligations (including ethical obligations) to their  
24 other clients.

25       Moreover, Centerview has narrowly tailored the Confidential Information to capture only  
26 those four client engagements that are not publicly known and are therefore commercially sensitive,  
27 while at the same time disclosing as much information as possible about the nature of the  
28 connections. For example, Centerview disclosed that the confidential client connections were to

1 potential parties in interest and/or affiliates thereof (the “Parties”) in the following categories: “Bank  
2 Accounts,” “Contract Counterparties,” “Litigation Counterparties/Litigation Pending Lawsuits,”  
3 “Top Unsecured Creditors,” “Unsecured Notes,” “Utility Providers,” and “Vendors.” Centerview  
4 Application Ex. B, Schedule 2 at 4.

5 Finally, this issue has already been decided by another court, albeit one in a different but  
6 influential jurisdiction. On April 8, 2019, Chief Judge Sontchi of the United States Bankruptcy Court  
7 for the District of Delaware granted a motion permitting Centerview to file under seal the names of  
8 its confidential client engagements. *In re CTI Foods, LLC*, Case No. 19-10497 (CSS) (Bankr. D.  
9 Del. April 8, 2019) (granting Motion to File Certain Confidential Information Under Seal where like  
10 here, Centerview’s Confidential Information constituted clients’ names, because there was a valid  
11 basis under Section 107(b) and the redactions were narrowly tailored to apply to only the most  
12 sensitive information). Chief Judge Sontchi took that opportunity to affirm that the presumption of  
13 disclosure is not absolute. *Id.* The protections outlined in Section 107 curb that presumption and  
14 exist to preserve the “confidentiality of sensitive, confidential business information.” *Id.* And when  
15 it is “clear that the redactions have been very narrowly tailored to apply to only the most sensitive  
16 information,” a party has met its burden under Section 107(b). *Id.* There, Centerview met its burden.  
17 *Id.* As it does here, Centerview disclosed the relationship of the parties in interest to the debtors. *Id.*  
18 As it does here, Centerview redacted only the most commercially sensitive information. *Id.*

19 Centerview fully appreciates the importance of the policy of open access to court records. *See*  
20 11 U.S.C. § 107(a) (“[e]xcept as provided in subsections (b) and (c) and subject to section 112, a  
21 paper filed in a case under this title and the dockets of a bankruptcy court are public records open to  
22 examination by an entity at reasonable times without charge”). In fact, the Committee’s application  
23 to retain Centerview disclosed Centerview’s engagements with over 60 potential parties in interest.  
24 Centerview Application Ex. B, Schedule 2 at 4.<sup>3</sup> As discussed above, just five of these engagements  
25 were not disclosed due to confidentiality obligations. *Id.* And when one of these engagements  
26 (Waste Management, Inc.) became public, Centerview disclosed it. Chopra Decl. ¶ 6. In this spirit,

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27  
28 <sup>3</sup> Certain of these four potential parties-in-interest and/or their affiliates fall into multiple  
categories.

1 Centerview is prepared to publicly file supplemental disclosures for the remaining engagements  
2 within a reasonable time after the need for confidential treatment no longer applies.

3 Thus, as in *CTI*, because the Confidential Information discussed above falls within the  
4 scope of Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, and because the  
5 request is narrowly tailored to include only the most sensitive information, the Court should  
6 grant Centerview's request.

#### 7 **IV. NOTICE**

8 Notice of this Motion shall be provided to (i) the U.S. Trustee; (ii) counsel to the Debtors; (iii)  
9 counsel to the Official Committee of Tort Claimants; (iv) the Securities and Exchange Commission;  
10 (v) the Internal Revenue Service; (vi) the Office of the California Attorney General; (vii) the  
11 California Public Utilities Commission; (viii) the Nuclear Regulatory Commission; (ix) the Federal  
12 Energy Regulatory Commission; (x) the Office of the United States Attorney for the Northern  
13 District of California; (xi) counsel for the agent under the Debtors' debtor in possession financing  
14 facility; and (xii) those persons who have formally appeared in these chapter 11 cases and requested  
15 service pursuant to Bankruptcy Rule 2002. Centerview respectfully submits that no further notice is  
16 required.

#### 17 **V. CONCLUSION**

18 To prevent the negative business implications discussed above and to simultaneously ensure  
19 appropriate disclosure and transparency in these chapter 11 cases, Centerview seeks limited relief to  
20 file the Confidential Information under seal in connection with the Application of the Official  
21 Committee of Unsecured Creditors to Retain and Employ Centerview as Investment Banker. For the  
22 reasons set forth above, Centerview requests that the Confidential Information be kept under seal as  
23 set forth in the Proposed Order.

1 Dated: April 19, 2019

2 OSCAR GARZA  
3 GIBSON, DUNN & CRUTCHER LLP

4  
5 By: /s/ Oscar Garza  
6 Oscar Garza

7 *Counsel for Centerview Partners LLC*  
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